

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11205 OF 2022

**THE STATE OF MAHARASHTRA THR SECRETARY,
EDUCATION AND SPORTS DEPARTMENT MANTRALAYA
MUMBAI**

VERSUS

VISHAL PANDHARINATH GANGAWANE

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**AGP for the Petitioners/State : Shri S.G. Sangle
Advocate for Respondent 1 : Shri Ajay S. Deshpande**

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CORAM : RAVINDRA V. GHUGE

&

SANJAY A. DESHMUKH, JJ.

DATE :- 07th December, 2022

Per Court :-

1. The petitioners are the State of Maharashtra and the Deputy Director of Sports and Youth Services. They have put forth prayer clauses B and C as under:-

“B. *The writ petition may kindly be allowed and please to quash and set aside the judgment and order dated 18.07.2022 passed by the learned Division Bench of Maharashtra Administrative Tribunal Bench at Aurangabad in Original Application no. 832/2016.*

C. *Pending hearing and final disposal of this Writ Petition, stay the effect, operation, implementation and execution of the judgment and order dated 18.07.2022 passed by the learned Hon'ble Division Bench of Maharashtra Administrative Tribunal Bench at*

*Aurangabad in Original Application
no.832/2016.”*

2. We have considered the strenuous submissions of the learned AGP on behalf of the petitioners and the learned advocate on behalf of the original applicant. We have perused the judgment delivered by the learned Maharashtra Administrative Tribunal, dated 18.07.2022 in Original Application No.832/2016. Respondent No.1 herein is the original applicant.

3. In paragraph 14 of the impugned judgment, the Tribunal has noted that the learned counsel for the original applicant has brought it to the notice of the Tribunal that the originally selected candidate Shri Sagar Sadashiv Kokane (respondent No.2 herein), who was appointed on the post of a Driver, which was reserved for the NT-B category, belongs to NT-C category. It was brought to the notice of the Tribunal that the said Shri Kokane was promoted to the post of a Clerk and therefore, he has given up all his rights to the post of a Driver and has joined the post of a Clerk and the post of a Driver occupied by him had fallen vacant.

4. We find from the impugned judgment that the entire issue turned upon one post of driver, which was reserved for NT-

B category. The original applicant belongs to NT-B category. The original appointee respondent No.2/Shri Kokane belongs to NT-C category. Respondent No.2 had actually not even applied for the said post. Yet, he was selected. The Tribunal was intrigued by the fact that Shri Kokane had never applied to the post of driver and yet was selected and appointed, though he belonged to the NT-C category, on the post reserved for the NT-B category. This was the only controversy before the Tribunal.

5. Considering these aspects, the Tribunal finally concluded in paragraphs 15, 16 and 17 as under:-

“15. For the reasons stated above we are inclined to accept the prayer of the present applicant. We hold that the applicant is entitled to be appointed on the post of Driver from NT-B category. We are further intending to direct the respondents to conduct the test of the applicant for heavy motor vehicle if they find it necessary and in the circumstances the respondents may also test the skill of the present applicant to drive light motor vehicle and give him aggregate marks for his knowledge in respect of light motor vehicle, as well as, heavy motor vehicle and driving skill for both light motor vehicle and heavy motor vehicle.

16. In view of the facts and circumstances discussed hereinabove there has remained no doubt that the name of the applicant was wrongly included in the list of failed candidates. In our opinion, the applicant has satisfied the prescribed criterion and was liable

to be considered for to be appointed to the post of Driver, reserved for NT-B candidate. In fact, according to us, on the basis of marks shown to have been earned by the applicant, he is liable to be selected for the subject post. However, in view of the prayer made on behalf of the applicant we deem it appropriate to direct the respondent no. 1 to conduct the proficiency test for the applicant more particularly of heavy motor vehicle. It would be advisable if the respondent no. 1 chooses some different agency than the agency which had earlier conducted the said proficiency test. It would be open for the respondent no. 1 to direct the applicant to give the test of driving light motor vehicle also so that it may be easier to assess his performance. If the applicant succeeds in securing prescribed marks in the proficiency test, the respondent no. 1 shall offer him appointment to the post of Driver reserved for NT-B candidate. The aforesaid exercise is to be completed by respondent no. 1 within one month from the date of this order. (From the date on which the present order may be uploaded on the official website of this Tribunal).

17. *It was sought to be contended by learned CPO that the another NT-B candidate namely Shri Bhaiya Shantaram Tirmali may also be considered for his appointment since he has received more marks than the applicant. We are however not inclined to accept the contention so raised by the learned CPO for the reason that said candidate Shri Bhaiya Shantaram Tirmali has not made any grievance either with the respondent authorities or with this Tribunal till this date though his name was included in the list of failed candidates in the year 2015.”*

6. Considering the above, we do not find that the

petitioners have made out any ground to convince us that the impugned judgment could be termed as being perverse or erroneous. In the backdrop of the admitted facts that the post of a Driver with regard to which the original applicant had raised the controversy, was reserved for NT-B category, the original applicant belongs to NT-B category and Respondent No.2 Shri Kokane, who was earlier appointed on the post of the driver, belongs to NT-C category. Moreover, before the Tribunal, Shri Kokane has withdrawn from the fray and has vacated the post of a Driver, to which he was selected and which selection was subjected to judicial scrutiny before the Tribunal. In this backdrop, the conclusions drawn by the Tribunal cannot be faulted or termed as perverse.

7. Having considered the directions of the Tribunal vide which, the petitioners are now obliged to conduct a driving test of the original applicant in relation to Heavy Motor Vehicle (HMV) and if the original applicant is found to be eligible in such driving test, the marks that would be scored in such test would be considered as marks allotted to the proficiency test and accordingly, the petitioners will have to take a decision as regards considering the candidature of the original applicant for

appointment as a Driver.

8. In view of the above, this Writ Petition is dismissed.

9. Needless to state, the timeline of one month as advised by the Tribunal and which has not been complied with by the petitioners/State, shall be effective from the date of this order.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)